

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7933 OF 2021

Vijaysingh Ramsingh Patil,
Age : 58 years, Occu : Service,
R/o. Varadsim, Tal. Bhusawal,
Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai.
2. Director of Education, Secondary
and Higher Secondary, Pune,
Tal. and Dist. Pune
3. Deputy Director of Education,
Nashik Division, Nashik,
Tal. and Dist. Nashik.
4. The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
Tal. and Dist. Jalgaon
5. Superintendent of Pay Unit,
Zilla Parishad, Jalgaon,
Tal. and Dist. Jalgaon
6. Accountant,
Finance Department,
Zilla Parishad, Jalgaon,
Tal. and Dist. Jalgaon

.. Respondents

...

Mr. Vivek J. Dhage, Advocate for the petitioner
Smt. Vaishali N. Patil Jadhav, AGP for respondent nos.1 to 4

...

AND

WRIT PETITION NO.12590 OF 2021

Bhimrao s/o. Deochand Girade,
Age : 59 years, Occu : Retired,
R/o. Station Road, Nimbhora (Bk.),
Tal. Raver, Dist. Jalgaon

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai.
2. Director of Education, Secondary
and Higher Secondary, Pune,
Tal. and Dist. Pune
3. Deputy Director of Education,
Nashik Division, Nashik,
Tal. and Dist. Nashik.
4. The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
Tal. and Dist. Jalgaon
5. Superintendent of Pay Unit,
Zilla Parishad, Jalgaon,
Tal. and Dist. Jalgaon
6. Accountant,
Finance Department,
Zilla Parishad, Jalgaon,
Tal. and Dist. Jalgaon
7. Accountant General,
Office of the Accountant General,
(Accounts and Entitlements)-1,
Pratistha Bhavan (Old C.G.O. Building),
101, Maharshi Karve Marg, 2nd Floor,
Mumbai

.. Respondents

Mr. Vivek J. Dhage, Advocate for the petitioner
Mr. K.N. Lokhande, AGP for respondent nos.1 to 4

...

AND

WRIT PETITION NO.10423 OF 2021

Chhotulal s/o. Jivan Patel,
Age : 57 years, Occu : Service,
R/o. Bamkhede Tarad Tarfe,
Tal. Shahada, Dist. Nandurbar

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai.
2. Director of Education, Secondary
and Higher Secondary, Pune,
Tal. and Dist. Pune
3. Deputy Director of Education,
Nashik Division, Nashik,
Tal. and Dist. Nashik.
4. The Education Officer (Secondary),
Zilla Parishad, Nandurbar,
Tal. and Dist. Nandurbar
5. Superintendent of Pay Unit,
Zilla Parishad, Nandurbar,
Tal. and Dist. Nandurbar
6. Accountant,
Finance Department,
Zilla Parishad, Nandurbar,
Tal. and Dist. Nandurbar

.. Respondents

...

Mr. Vivek J. Dhage, Advocate for the petitioner
Mr. S.B. Yawalkar, AGP for respondent nos.1 to 4

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 12-08-2022
PRONOUNCED ON : 19-08-2022**

JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

. Heard. Rule. It is made returnable forthwith. Smt. Vaishali N. Patil – Jadhav, Mr. K.N. Lokhande and Mr. S.B. Yawalkar, learned Additional Government Pleaders waive service for the respondent - State. At the joint request of learned advocate for the petitioners and the learned AGPs, the matters are heard finally at the admission stage.

2. The common issue that arises for our consideration in these three writ petitions is, whether part time librarians are entitled to the benefit of pension and other pensionary benefits?

3. Since an issue of law is involved in the present petitions, factual matrix in respect of each petitioner is not of much relevance and therefore, we do not propose to narrate facts in respect of each of the writ petition. Suffice it to state that all the three petitioners were initially recruited on the post of ‘part time Librarian’ in the respective schools. Initially, approval was granted for sanction of the post of the

part-time librarian in the respective schools. After appointments of the petitioners, approval has been granted for their appointments as part-time librarians. In accordance with the approvals granted, the petitioners have received salaries payable for the post of part time librarian by virtue of grant-in-aid. All the petitioners continued to work on the post of part time librarian and the present petitions are filed by them on the verge of their retirements. In fact, the petitioner in Writ Petition No. 12590 of 2021 had retired on the date of filing of the petition.

4. In all the three petitions, order dated 18.10.2014 passed by the Director of Education (Secondary and Higher Secondary) has been challenged. The said order dated 18.10.2014 has been passed in deference to the order dated 14.10.2013 in Writ Petition No.8378 of 2013 filed by one of the petitioners herein (Vijaysingh Ramsingh Patil). By the decision dated 18.10.2014, it has been conveyed that the pension scheme or provident fund scheme is not applicable to part time librarians.

5. Mr. Vivek Dhage, learned advocate for the petitioners submits that the petitioners have worked as permanent employees on permanent establishment against sanctioned posts. He further

submits that the petitioners are being paid pay scales / pay bands. In support of his contention, he relied upon Government Resolution dated 04.11.2009 by which the State Government has prescribed various pay bands for part time employees. Relying on the said G.R., he submitted that there is no distinction between the petitioners and the full time regular employees and therefore, the pension scheme is applicable to them.

6. The main thrust of the submissions of Mr.Dhage has been on Rule 19 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (hereinafter referred to as the 'Rules of 1981'). He submitted that Rule 19, which deals with pension, classifies the employees into three categories as under:

- (i) Employee of aided secondary school and aided junior college working on full time basis and retiring on or after 01.04.1966,
- (ii) Employee of aided primary school working on full time basis and retiring on or after 01.04.1979, and
- (iii) Employee appointed on or after the above mentioned dates.

7. He submitted that in respect of the categories (i) & (ii) the

words “full time basis” have been used, whereas in respect of employees falling in category (iii) the words “full time basis” have consciously not been used. He, therefore, submitted that on account of absence of the words “full time basis” in respect of employees falling in category no.(iii), they are entitled to pension regardless of the fact whether they work on full time basis or part time basis.

8. Mr. Dhage further placed reliance on the definition of the term employee under Section 2 (7) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and submitted that every employee, whether full time or part time, is covered by the definition of the term employee. Mr. Dhage then relied upon provisions of Rule-30 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter in short ‘Rules of 1982’) and submitted that since the petitioners are appointed substantively on the post of part time librarian, they are entitled to grant of pension and pensionary benefits under the provisions of the Rules of 1982.

9. In support of his contentions, Mr. Dhage relied upon the following decisions:

- (i) **Union Public Service Commission Vs. Dr. Jamuna Kurup and others, 2008 AIR SCW 3780.**

- (ii) **Vandana Eknath Bhondwe Vs. State Bank of India, Nagpur and another, 2019 (2) Mh.L.J.197.**
- (iii) **Judgment and order dated 01.10.2021 passed by this Court, Principal Seat in the case of Nilesh Namdev Gurav & Ors. Vs. The State of Maharashtra & Ors.**

10. The submissions of Mr. Dhage have been opposed by Mr. S.B. Yawalkar, Mr. K.N. Lokhande and Mrs. Vaishali N. Patil Jadhav, Additional / Assistant Government Pleaders. Firstly, the petitions are opposed on the ground of delay and laches submitting that there is delay of 7 years in challenging decision dated 18.10.2014. They further submit that on account of provisions of Rule 70.4 of the Secondary Schools Code, 2015 (hereinafter in brief, 'Code of 2015'), the petitioners are not entitled to pension. They further submit that a part time post is not covered by the term substantive post within the meaning of Rule 30 of the Rules of 1982. They further submit that interpretation of Rule 19 of the Rules of 1981 placed by the petitioners is completely erroneous and the correct interpretation would mean that only the full time employees would be entitled to pension. Mr. Yawalkar has also relied on the provisions of Rule 20 of the Rules of 1981 to submit that only such part time employees who are employed in more than one schools run by the same management and doing full time load of work are entitled to provident fund and pension. Relying on entry no.81 in Schedule 'C' read with Rule 7 of

the Rules of 1981, Mr. Yawalkar submitted that the post of part time librarian is not even included in Schedule 'C'.

11. Mr. Yawalkar also relied on Rule 57 of the Rules of 1982 to buttress his contention that part time employees are not entitled to pension. Mr. Yawalkar, Mr. Lokhande and Mrs. Jadhav - Patil relied upon following judgments in support of their contentions:

- (i) **Ramkrishna Sadashiv Jadhav Vs. State of Maharashtra & Ors., [2006 (5) Mh.L.J.411].**
- (ii) **Bankerai Ambikarai Sharma Vs. State of Maharashtra & Ors, 2007 (1) ALL MR 373.**
- (iii) **Agapito Hilary Fernandes Vs. State of Maharashtra & Others, Writ Petition No.2403 of 2003 decided on 12.10.2017.**

12. The rival contentions of the parties now fall for our consideration.

13. Before we advert to the merits of the matter, we first deal with the objection of delay and laches. True it is that there has been delay of 7 years in setting up a challenge to the decision dated 18.10.2014. However, it is also a fact that two petitioners were still in service and one has retired just before filing of the petition. Also, it is now trite that claims for pay or pension are continuous causes of action, and the courts may at the most restrict arrears to three years

prior to filing of petition (See. **M.R. Gupta Vs. Union of India, (1995) 5 SCC 628, Union of India Vs. Tarsem Singh (2008) 8 SCC 648 and State of Madhya Pradesh Vs. Yogendra Shrivastava (2010) 12 SCC 538**). We, therefore, are of considered opinion that the petitions cannot be rejected only on grounds of delay. We accordingly proceed to deal with merits of various contentions raised by the Counsels for parties.

14. The entire controversy, in our opinion, revolves around the provisions of Rule-70 of the Code of 2015. It would, therefore, be apposite to reproduce the same as under:

Rule - 70 :

“Pension/Provident Fund:

70.1. Every employee on a full-time basis in aided and recognised schools (except those run by local bodies) who was appointed before 1st April 1966 and who had exercised in writing his option for a pension scheme and those appointed on or after 1st April 1966 shall be eligible to get pension as per rules prescribed by Government.

70.2. Those members appointed before 1st April 1966 and who have opted for Contributory Provident Fund shall subscribe to that Fund, as per rules prescribed by Government.

70.3. The managements of recognised but unaided schools shall have a Provident Fund scheme of their own, if they so desire, which should be got, sanctioned by the Department. Otherwise, they shall follow the Provident Fund scheme on similar lines as the Contributory Provident Fund scheme prescribed by Government except that the Government share equal to the management's share will not be paid by Government.

70.4. Part-time employees and those working in Night High Schools are not eligible either to the Provident Fund Scheme or to Pension Scheme.”

15. Rule 70.1 makes it abundantly clear that only full time employee who is either appointed before 01.04.1966 and had opted for pension scheme as well as the one who is appointed after 01.04.1966 is eligible to get pension as per the rules prescribed by the government. Since the petitioners are appointed after 01.04.1966, applying the provisions of Rule 70.1, it would be necessary for the petitioners to fall in a category of “every employee on full time basis”. Any doubt with regard to part time employees is solved by the provisions of Rule 70.4, which, in no unequivocal terms, provides that part-time employees are not eligible either to the provident fund scheme or to the pension scheme. Mr. Dhage has not disputed the position that the petitioners are governed by the provisions of the Code of 2015. Therefore, on plain reading of the provisions of Rule 70.1 and 70.4 it is crystal clear that part-time employees are not entitled either to provident fund Scheme or to pension scheme.

16. Faced with this difficulty created by the provisions of Rule 70.1 and 70.4 of the Code of 2015, Mr. Dhage attempted to

bring the petitioners within the scope of pension scheme by relying upon provisions of Rule 19 of the Rules of 1981, which according to him also applying to them. Rule 19 is reproduced herein below :

“19. Pension. - An employee of an aided secondary school and aided Junior College of Education working on full time basis and retiring on or after the 1st April 1966 and an employee of an aided primary school working on full time basis and retiring on or after the 1st April 1979 but who have opted for pension and the employee appointed on or after the above mentioned respective dates shall be eligible for pension at the rates and in accordance with the rules as are sanctioned by Government specifically to the employees of private schools.”

17. After going through the provisions of Rule 19, we find that interpretation placed before us by Mr. Dhage is entirely erroneous. Even though Rule 19 divides the employees into three categories as stated herein above, the correct interpretation of Rule 19 would mean that the words “full time basis” is common to all the three categories. If the erroneous interpretation of Mr. Dhage is accepted, then on account of non-inclusion of the word “added” in the 3rd category of employees, even employees of unaided schools would be in position to demand pension. When we put across this difficulty before Mr. Dhage, he could not give any satisfactory answer. A purposeful interpretation is required to be given to the provisions of Rule 19. Furthermore, there has to be harmonious interpretation of the provisos of Rule 70.4 of the Code of 2015 and Rule-19 of the Rules of 1981. If we accept the erroneous interpretation placed

before us by Mr. Dhage, the same would render the provisions of Rule 70.4 of the Code of 2015 otiose. Therefore, we must avoid such erroneous interpretation of Rule 19 which would render Rule 70.4 of the Code of 2015 superfluous. We, therefore, reject the contention of Mr. Dhage that all part time employees appointed after 01.04.1966 or 01.04.1979 in secondary school and primary school, whether they work on full time or part-time basis are entitled to the benefit of pension scheme.

18. Reliance of Mr. Dhage on provisions of Rule-30 of the Rules of 1982 is again completely misplaced. Mr. Dhage attempted to fit the part time services rendered by the petitioners within the ambit of the term “qualifying service” as provided for in Rule-30. However, he conveniently ignores the provisions of Rule 57, which reads thus:

“57. Non-Pensionable service. -

As exceptions to Rule 30, the following are not in pensionable service:

- (a) Government servants who are paid for work done for Government but whose whole time is not retained for the public service.
- (b) Government servants who are not in receipt of pay but are remunerated by honoraria.
- (c) Government servants who are paid from contingencies.
- (d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable.

- (e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.

Note 1. In cases of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by the conversion of their posts, one - half of their previous continuous service shall be allowed to count for pension.

Note 2. In the case of persons who were holding the posts of Attendants prior to 1st April, 1966, one-half of their previous continuous service as attendants, shall be allowed to count for pension.”

19. Rule 57 is an exception to Rule 30. Under clause (a) of Rule 57 part-time employees are specifically excluded from pensionable service. Therefore part time services rendered by the petitioners would not become qualifying service for pension within the meaning of Rule 30.

20. The judgments relied upon by Mr. Dhage have no remote application to the issue involved in the present case.

(i) In **Union Public Service Commission Vs. Dr. Jamuna Kurup** (supra), the issue was with regard to age relaxation and in that context the Supreme Court has clarified the meaning of the word ‘employee’ to include permanent or temporary, regular or short term,

contractual or *ad hoc* employees. We fail to understand as to how this judgment can assist the petitioners in their cause.

(ii) In **Vandana Eknath Bhondwe Vs. State Bank of India** (supra), the issue was about the eligibility of the petitioner therein for pension on account of non-completion of 15 years of service for voluntary retirement. In that context, this Court has held that pension is in the nature of 'property' as contemplated by provisions of Article 300-A of the Constitution of India. Therefore, this decision again has no application to the present case.

(iii) In **Nilesh Namdev Gurav Vs. The State of Maharashtra** (supra), the issue was about applicability of the old pension scheme to the petitioners therein, who were initially recruited as part time librarians / part time assistant teachers during the old pension scheme, who are converted to full time employment after coming into the effect of the new defined contributory pension scheme. Since the pension scheme itself is inapplicable to petitioners herein, this decision has no application to the present case.

21. On the other hand, the judgments relied upon by Mr. Yawalkar, Mr. Lokhande and Mrs. Jadhav Patil are more apposite.

(i) In **Bankerai Ambikarai Sharma Vs. State of Maharashtra** (supra), Full Bench of this Court has held that 'part time lecturer working in two institutions managed by two different managements cannot be held to be full time lecturer for the purpose of pension.

(ii) In **Ramkrishna Sadashiv Jadhav Vs. State of Maharashtra** (supra), this Court once again held that a part time professor of law college is not entitled for pension.

(iii) In **Agapito Hilary Fernandes Vs. State of Maharashtra**, this Court followed the decisions in **Bankerai Ambikarai Sharma** (supra) and **Ramkrishna Sadashiv Jadhav** (supra) and held that a part time professor of law is not entitled to pension.

22. This Court thus, has been consistent in holding that part-time employees are not entitled to pension.

23. Mere placement in pay scales / pay bands by the State Government would not bring the part-time librarians within the ambit of the Pension Scheme or Provident Fund Scheme. There is specific exclusion of part-time employees from both the schemes by

virtue of the provisions of Rule 70.4 of the Code of 2015 and Rule 57 of the Rules of 1982. These specific provisions denying the benefit of pension scheme to part-time employees cannot be overlooked by relying on factors such as applicability of pay scales / pay bands or grant of approval to the appointment as part-time librarian or long service of the petitioners on the post of part-time librarian. The benefit, which has been specifically denied by the rules, cannot be bestowed upon the petitioners by way of a judicial decision.

24. In the result, we hold and declare that part-time librarians, who continue to work on the post of part-time librarians till their retirement, are not entitled to the benefit of Pension Scheme or Provident Fund Scheme.

25. The writ petitions are accordingly dismissed without any order as to the costs.

26. Rule is discharged.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)